

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TENNVADA HOLDINGS 1, LLC,

Appellant,

vs.

FREY IRREVOCABLE TRUST,
 KOWALSKI TRUST, and RUTH
 MAASARANI TRUST,

Appellees.

Case No.: 2:14-cv-02090-GMN

ORDER

In this bankruptcy appeal, Appellant Tennvada Holdings 1, LLC’s (“Debtor”) seeks review under 28 U.S.C. § 158(c)(1) of a trial ruling of the United States Bankruptcy Court for the District of Nevada (“the Bankruptcy Court”), finding that Appellee Frey Irrevocable Trust (“Frey”) had a secured claim against Debtor’s estate and Appellees Kowalski Trust (“Kowalski”) and Ruth Maasarani Trust (“Maasarani”) had unsecured claims against Debtor’s estate. Debtor asks the Court to reverse the Bankruptcy Court’s Trial Ruling. Debtor filed an Opening Brief (ECF No. 12). Appellees filed an Answering Brief (ECF No. 18), and Debtor filed a Reply Brief (ECF No. 25).

I. BACKGROUND

In December 2007, Integrated Financial Associates (“IFA”), a hard-money lender, made a loan to 1837 Tennvada Investments (“1837”) for \$2.75 million. (Compl. ¶ 14, ECF No. 13-1; Answer ¶ 1, ECF No. 13-2). The loan funded 1837’s purchase of a hotel (the “Property”) in Memphis, Tennessee. (*Id.*). IFA secured its loan with a deed of trust on the Property (the “IFA Deed of Trust”), which was recorded in Tennessee on December 31, 2007. (IFA Deed of Trust, ECF No. 13-3). Subsequently, IFA assigned fractional interests in the IFA Deed of Trust to twenty-one (21) private investors (the “IFA Loan Investors”). (Compl. ¶ 14; Answer ¶ 1).

1 On March 21, 2009, 1837 filed for Chapter 11 bankruptcy in the Bankruptcy Court.
2 (Answer ¶ 18). During the bankruptcy, the Bankruptcy Court approved two debtor-in-
3 possession (“DIP”) loans. (*See* DIP Loans, ECF Nos. 13-4–13-6). First, the Bankruptcy Court
4 approved a DIP loan from Frey in the amount of \$300,000 (the “First DIP Loan”). (First DIP
5 Loan, ECF No. 13-4). Second, the Bankruptcy Court approved a DIP loan from Appellees
6 Kowalski and Maasarani in the amount of \$100,000 (the “Second DIP Loan”). (Second DIP
7 Loan, ECF Nos. 13-5–13-6).

8 Frey, in an attempt to secure the First DIP Loan, recorded a deed of trust on the Property
9 (the “First DIP Deed of Trust”). (*See* First DIP Deed of Trust, ECF No. 13-7). However, the
10 First DIP Deed of Trust failed to provide a description of the Property or street address. (*Id.*)
11 Moreover, Kowalski and Maasarani never recorded a deed of trust to secure the Second DIP
12 Loan.

13 On October 20, 2010, the Bankruptcy Court dismissed 1837’s bankruptcy. (Order, ECF
14 No. 13-10). Following the dismissal of 1837’s bankruptcy, the IFA Loan Investors created
15 Tennvada Holdings 1, LLC (“Debtor”) and transferred their interests in and claims against
16 1837 to Debtor. (Compl. ¶ 15; Answer ¶ 15). The IFA Loan Investors are the sole owners of
17 Debtor, and IFA is the manager of Debtor. (*Id.*). Subsequently, IFA initiated foreclosure
18 proceedings on the IFA Deed of Trust, and on December 28, 2010, the Property was sold to
19 Debtor at a trustee’s sale. (Answer ¶ 32, 34; Trustee’s Deed, ECF No. 13-11).

20 On February 16, 2011, IFA and Appellees executed an agreement (the “2011
21 Agreement”). (The 2011 Agreement, ECF No. 13-12). Pursuant to the 2011 Agreement, IFA
22 agreed to acknowledge the superior priority and secured status of the DIP Loans and waived all
23 objections to the perfection and enforceability of the priority status of the DIP Loans. (*Id.*). In
24 return, Appellees agreed to forbear proceeding with any foreclosure action on the DIP Loans
25 until after August 1, 2011. (*Id.*).

1 On August 3, 2011, Frey rerecorded the First DIP Deed of Trust with a property
 2 description, which was omitted in the original filing. (*See* ECF No. 13-13). However, no one
 3 has ever attempted to record any deed of trust for the Second DIP Loan.

4 On September 2, 2011, Debtor filed Chapter 11 bankruptcy in the Bankruptcy Court. (*In*
 5 *re Tennvada Holdings I, LLC*, No. 11-24135-LBR). Moreover, on April 3, 2012, Debtor filed
 6 an adversary proceeding, which is the subject of this appeal, seeking a determination that
 7 Appellees do not have a claim against Debtor. (*See* Compl.).

8 On September 9, 2014, the Bankruptcy Court issued its Trial Ruling, holding that Frey
 9 held a secured claim against Debtor's estate and Kowalski and Maasarani held unsecured
 10 claims against Debtor's estate. (Trial Ruling, ECF No. 13-16).

11 **II. LEGAL STANDARD**

12 The Court reviews *de novo* the Bankruptcy Court's interpretation of state exemption
 13 laws, as well as its interpretation of the Bankruptcy Code. *See Hopkins v. Cerchione (In re*
 14 *Cerchione)*, 414 B.R. 540, 545 (B.A.P. 9th Cir. 2009). The Court reviews the Bankruptcy
 15 Court's factual findings for clear error. *In re Rains*, 428 F.3d 893, 900 (9th Cir. 2005); Fed. R.
 16 Bankr. P. 8013. The Bankruptcy Court's factual findings are clearly erroneous only if the
 17 findings "leave the definite and firm conviction" that the Bankruptcy Court made a mistake. *In*
 18 *re Rains*, 428 F.3d at 900 (quotation omitted).

19 **III. DISCUSSION**

20 On appeal, Appellant raises several issues. (*See* Opening Brief, ECF No. 12). However,
 21 the following issue is dispositive: Did the Bankruptcy Court err in denying rescission of the
 22 2011 Agreement based upon mutual mistake of the parties?

23 "Mutual mistake occurs when both parties, at the time of contracting, share a
 24 misconception about a vital fact upon which they based their bargain." *Gramanz v. Gramanz*,
 25 930 P.2d 753, 758 (Nev. 1997) (quoting *General Motors v. Jackson*, 900 P.2d 345, 349 (Nev.

1 1995)). “[A] mutual mistake is a basis for an equitable rescission of a contract.” *Id.* (quoting
2 *Tarrant v. Monson*, 619 P.2d 1210, 1211 (Nev. 1980)). “Likewise, a unilateral mistake can be
3 the basis for a rescission if ‘the other party had reason to know of the mistake or his fault
4 caused the mistake.’” *Oh v. Wilson*, 910 P.2d 276, 278 (Nev. 1996) (quoting *Home Savers v.*
5 *United Sec., Co.*, 741 P.2d 1355, 1356–57 (Nev. 1987)).

6 At trial, Debtor identified the fact that it believed was mutually mistaken by the parties
7 to the 2011 Agreement. (Trial Transcript 14:23–15:7, ECF No. 13-17). Specifically, Debtor
8 identified that the 2011 Agreement “was made based upon the mistake of both parties, who
9 mistakenly believed that deeds of trust had been perfected on the debtor-in-possession loans.”
10 (*Id.* 14:23–15:1). Thus, Debtor argued that the parties to the 2011 Agreement were mistaken as
11 to whether the DIP Loans had been perfected prior to the 2011 Agreement. (*Id.*). The Court
12 finds that the parties to the 2011 Agreement were mutually mistaken about the perfection status
13 of the DIP Loans.

14 Such mutual mistake is supported by the trial record. First, William Dyer, President and
15 CEO of IFA, testified that at the time of IFA’s foreclosure on the Property, IFA believed that
16 the DIP Loans were perfected. (Trial Transcript 43:19–21). Furthermore, at the time of the
17 2011 Agreement, IFA believed that the DIP Loans had a perfected security interest in the
18 Property. (*Id.* 54:7–22, 55:9–16, 76:15–18). Second, Omar Masarani, a representative of
19 Appellees, testified that he believed that the DIP Loans were perfected at the time of the 2011
20 Agreement. (*Id.* 92:24–93:3, 112:3–14). Accordingly, at the time of the 2011 Agreement, the
21 parties to the 2011 Agreement believed that the DIP Loans were perfected.

22 However, the Bankruptcy Court correctly found that the DIP Loans were unperfected at
23 the time of the 2011 Agreement. First, the Bankruptcy Court held that the First DIP Loan was
24 unperfected because the original filing of the First DIP Deed of Trust failed to include a
25 description of the Property. (Trial Ruling at 11, ECF No. 13-16). Second, the Bankruptcy

1 Court held that the Second DIP Loan was unperfected at the time of the 2011 Agreement
2 because a deed of trust was never filed. (*Id.* at 13). Thus, although the parties to the 2011
3 Agreement both believed the DIP Loans to be perfected at the time of the 2011 Agreement, the
4 Bankruptcy Court correctly held that the DIP Loans were unperfected.

5 Although, the Bankruptcy Court found that the DIP Loans were unperfected at the time
6 of the 2011 Agreement, it held that the “2011 Agreement effectively renewed or reinstated the
7 security interests of all the [Appellees] despite the fact that the foreclosure would have
8 otherwise terminated those interests.” (Trial Ruling at 12, ECF No. 13-16).

9 When analyzing the issue of whether the 2011 Agreement was void for mutual mistake,
10 the Bankruptcy Court analyzed whether the parties were mistaken as to the fact that the IFA
11 foreclosure had occurred prior to the 2011 Agreement. (Trial Ruling at 14–15). Analyzing
12 Dyer’s testimony, the Bankruptcy Court found as follows:

13 Bill Dyer, who signed the agreement on behalf of IFA,
14 testified that at the time the parties executed the 2011 Agreement, he
15 was unaware Defendants’ interests in the property had not been
16 properly perfected. Additionally, he testified (despite being the
17 President of IFA and the manager of Debtor) that he was unaware
18 IFA had foreclosed on the property and purchased it at the
19 foreclosure. He asserted he was unaware of this because the
20 foreclosure proceeding was done by Michael Hewgley acting as
21 substitute trustee. However, he also testified that he first knew of
22 the sale on December 28th. This is the date of the foreclosure sale.

23 The Court finds this testimony inconsistent. If Bill Dyer knew
24 of the foreclosure on December 28, 2010—the date of the sale—then
25 he knew of the foreclosure sale at the time of the 2011 Agreement.
Therefore, the Court finds Debtor’s argument that the 2011
Agreement is void for mutual mistake without merit.

(*Id.*). The Bankruptcy Court failed to analyze whether the parties to the 2011 Agreement were
mutually mistaken as to the perfection of the DIP Loans, even though Debtor clearly identified
such mutual mistake to the Bankruptcy Court. (*See* Trial Transcript 14:23–15:7).

1 Accordingly, because the trial record clearly establishes that the parties to the 2011
2 Agreement were mistaken as to the perfection of the DIP Loans and this fact is vital to the
3 bargain of the 2011 Agreement, the Court finds that such mutual mistake warrants rescission of
4 the 2011 Agreement. As a result, because the DIP Loans were unperfected at the time of the
5 IFA foreclosure, the IFA foreclosure terminated the interests held by Appellees. Thus, the
6 Appellees do not hold claims against Debtor's estate.

7 **IV. CONCLUSION**

8 **IT IS HEREBY ORDERED** that the Trial Ruling of the United States Bankruptcy
9 Court for the District of Nevada filed September 9, 2014, is **REVERSED**. Accordingly, the
10 Appellees do not hold claims against Debtor's estate.

11 **IT IS FURTHER ORDERED** that the Clerk of the Court shall send a copy of this
12 Order to the U.S. Bankruptcy Court, and shall thereafter close the case.

13 **DATED** this 31 day of July, 2015.

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Gloria M. Navarro, Chief Judge
United States District Judge